

Citizen Charter Review Committee

November 3, 2009

11:30 a.m.-1:30 p.m.

Leon County Courthouse

Commission Chambers, 5th floor

AGENDA

- | | | |
|-------|----------------------------------|--|
| I. | Opening Remarks | Parwez Alam
County Administrator |
| II. | Introduction of Kurt Spitzer | Vincent S. Long
Deputy County Administrator |
| III. | Overview of Charter Government | Kurt Spitzer
Kurt Spitzer and Associates |
| IV. | Overview of Florida Sunshine Law | Herb Thiele
County Attorney |
| V. | Election of Chair/Vice-Chair | Parwez Alam |
| VI. | Review of Committee By-laws | Kurt Spitzer |
| VII. | Review of Committee Schedule | Kurt Spitzer |
| VIII. | Member Discussion | Committee |
| IX. | Adjournment | |

The next meeting of the Citizen Charter Review Committee will take place on Thursday, November 12, 2009.

I.

OPENING REMARKS

II.

INTRODUCTION OF KURT SPITZER

III.

OVERVIEW OF CHARTER GOVERNMENT

IV.

OVERVIEW OF FLORIDA SUNSHINE LAW




*Board Appointed Committees
and the
Florida Sunshine, Public Records,
and Code of Ethics Laws*



Leon County has a legal obligation to comply with the:


- ⦿ Sunshine Law
- ⦿ Public Records Law and the
- ⦿ Florida Code of Ethics.

This presentation highlights the requirements of these laws and how they relate to Board appointed committees.



The Laws

- ⦿ Protect the public from “closed door” decision making and provide a right of access to governmental meetings. (*F. S. Sec. 286.011 (“Sunshine Law”) and Fl. Constitution Art. I, Sec. 24*)
- ⦿ Create a right of access to records made or received in connection with official business of a public body. (*F. S. Chap. 119*)
- ⦿ Protect against conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist. (*F. S. 112, Part III, Code of Ethics for Public Officers and Employees and the Fl. Constitution Art. II, Sec. 8*)



Committee Type Determines the Applicability of these Laws

Decision Making Committees become part of the Board's decision making process:

- Choose alternatives and direction; narrow or eliminate options for the Board's consideration
- Make decisions by voting
- Make recommendations to the Board directly or through staff
- Create by-laws
- Provide more than fact-finding or technical assistance
- Facilitated by staff

• **Focus Groups** provide a source of community input and factual resources:


- Have no characteristics of a Decision Making Committee
- Do not need by-laws
- Provide individual input, data and factual findings to staff, as part of staff's development in its advisement to the Board
- Do not take votes
- Maintain a brainstorming focus.



The Sunshine Law


Gives the public access to meetings of “any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision.”

- Allows the public to observe each preliminary step leading to the final decision.
- Prevents the Board from creating closed committees that narrow the Board’s decisions.
- Applies to Board appointed committees.
- An AG opinion advises it also applies to an individual Board member, appointed to negotiate, narrow decisions, or make decisions for the full Board.



Meetings Subject to the Sunshine Law


- Include formal or casual discussions about a matter on which the Board or Committee may foreseeably take action, between:
 - ⊗ Two or more Board members, or
 - ⊗ Two or more members of a Decision Making Committee.
- May occur through telephone or e-mail communications, or exchanges during workshops, social events, football games and neighborhood barbeques.



The Sunshine Law Imposes Three Obligations of Openness

1. Reasonable notice of meetings subject to the Sunshine Law must be given

- Requires giving the public reasonable and timely notice so they can decide whether to attend. What is “reasonable” or “timely” depends on the circumstance. Does not necessarily require a newspaper advertisement. Contact the County Attorney’s office for guidance.




2. Public must be allowed to attend meetings – however there is no obligation to allow them to participate

- Meetings cannot be held at exclusive or inaccessible facilities
- No evasive actions are allowed, such as:
 - Circulating written reports to elicit responses or positions on issues
 - Using staff, lobbyists, or other means to seek other members’ positions about issues.

3. Minutes of the meetings are required

- Written minutes must be taken and promptly made available
 - Sound recordings may also be used, in addition to written minutes
 - Minutes may be a brief summary of meeting’s events
 - Minutes are public records
 - Minutes must record the votes.



The Sunshine Law Applies When:


- ☉ Two or more members of a governing board (such as the BCC) discuss a matter that may foreseeably come before the governing board.
- ☉ A governing board moves any part of its decision making process to a committee or group, thereby appointing an “alter ego.”
 - According to an AG opinion, this may also include an individual Board or Committee member appointed formally or informally to negotiate, narrow or eliminate options or decisions for the full Board or Committee.



The Sunshine Law Does Not Apply to:

- Committees or groups appointed to engage only in fact-finding activities
- Board created focus groups or other such committees that:
 - Only provide individual input, data and facts as part of staff's development in its advisement to the Board
 - Do not narrow options.

The Sunshine Law is Broadly Construed – Exemptions are Narrowly Construed



Penalties for Noncompliance (also apply to Decision Making Committees)

A violation of the Sunshine Law by the Board or a Decision Making Committee, can nullify Board decisions.


Criminal Penalties:

- It is a second degree misdemeanor to knowingly violate the Sunshine Law
- Punishable with a fine of up to \$500 and/or up to 60 days imprisonment

Other Penalties Include:

- Removal from position
- Payment of attorney's fees incurred by the challenging party, as well as declaratory and injunctive relief.

Sentenced to Jail for Sunshine Law Violations: Suspended Escambia County Commissioner W.D. Childers was sentenced to 60 days in jail for discussing redistricting in a telephone conversation while fellow commissioner listened on a speaker phone, and pleaded no contest for talking with two fellow commissioners about county building projects in front of a staffer.



Childers To Prison

No conviction entered

Former Florida Senate President W.D. Childers, 68, was sentenced to 60 days in state prison after last month's jury verdict on charges of violating former Escambia County commissioner "Bibi" Burt's Sunshine Law. Childers allegedly talked Burt into waiving the former prison counselor's Prisoner's Oath at a price of \$1.7 million.

After he completes his sentence, Childers also will have to perform 250 hours of community service and serve 1 1/2 years on probation.

Prosecutors sought the maximum penalty of 10 years, five years on each count and more than \$1 million in restitution. Prosecutors also asked the judge to order restitution of more than a million dollars to cover alleged county losses on the real estate deal. However, the judge declined to order restitution. Childers maintained he had a legitimate real estate deal.

Childers, 68, also has been [convicted](#) for violations of Florida's open government "sunshine" law. He will begin serving that 1 1/2 year prison sentence once he completes the jail term.

The "Bibi Burt" case, as he was known, came to a state legislature in Tallahassee, decided to reach county office as a Republican in 2005 but never he was term-deleted under a new Florida law. Childers' challenge to the term limit law also was tossed away by the courts.

Childers was accused of bribing Burt, a Tallahassee Democrat, with at least \$100,000 in checks. Burt testified Childers handed him the money just following the vote but that he returned \$40,000 in exchange for a staffer's check.


Childers denied giving Burt any cash and testified the checks were from money he gave to Burt's wife as a holiday gift. He produced two handwritten promissory notes that had agreed. Assistant State Attorney John Olson argued that Childers could not be sure with the cash deal in order to deliver them, which he had after doing with other deals, including Burt's Senate members.

Last year Burt pleaded "no contest" to one Sunshine Law violation and 10 felonies, including bribery, racketeering and extortion. He also agreed to testify against other defendants in exchange for a prison term of no more than 10 months instead of a possible 125 years. Burt's sentencing has not yet been set.

Another Childers jury in December acquitted Lee Elliott of bribing Childers and Burt. Prosecutors charged Elliott gave Childers \$200,000 in cash between the two commissioners. Georgia Elliott also is facing bribery-related charges.

Two other suspended commissioners, Mike Burt and Terry Smith, received non-paid sentences including fines, costs and community service. Burt pleaded no contest to two Sunshine Law violations and prosecutors dropped bribery and other felony counts. Smith was convicted on two Sunshine Law counts.

Childers' felony trial was moved to Crestview because of heavy news coverage in Panama City.



Public Records Law

- **Public Records Include:** All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of physical form or means of transmission made or received pursuant to law in connection with transaction of official business by the agency. (*Fl. Stat. Chapter 119*)

The Public Records Law Applies to:

- Records developed by the Board, Board Appointed Committees, and employees
- All types of records including written communications, letters, notes and e-mails.

Numerous exemptions are identified in Fl. Stat. 119.07, and other statutes.



Public Records Requests

Can be made:


- Verbally or in writing
- By any person.

The Board or Board Appointed Committee:

- Has a “reasonable” time to respond
- Can charge for the cost of retrieving records if the amount requested is voluminous
- Can charge 15 cents/page.


The Public Records Law does not Require:

- The retention of records (this is covered under the State’s records retention policy)
- The creation of records or the provision of records in the format requested
- An explanation of the records.



Florida Code of Ethics

- **Addresses:**
 - ⊗ Standards of Conduct
 - ⊗ Voting Conflict
 - ⊗ Financial Disclosure
- **Applies to:**
 - ⊗ County Commissioners
 - ⊗ Board Employees
 - ⊗ Board Appointed Committees
- Prohibits certain actions or conduct
- Requires certain disclosures be made to the public.



Standards of Conduct Prohibit
Public Officials, including Board
Appointed Committee Members, from...


- **Soliciting and Accepting Gifts.** May not solicit or accept anything of value that is based on an understanding that their vote, official action, or judgment would be influenced by such a gift.
- **Accepting Unauthorized Compensation.** May not accept any compensation, payment, or thing of value that is given to influence a vote or other official action.
- **Misusing Their Public Position.** May not corruptly use their official position to obtain a special privilege for themselves or others.
- **Disclosing or Using Certain Information.** May not disclose or use information not available to the public and obtained by reason of their public positions for the personal benefit of themselves or others.



Standards of Conduct further prohibit
Public Officials, including Board
Appointed Committee Members, from...

- ⚙ **Doing business with their agency.** A public official's agency may not do business with a business entity in which the public official, or their spouse or child own more than a 5% interest.
- ⚙ **Engaging in Conflicting Employment or Contractual Relationships.** A public official may not be employed or contract with any business entity regulated by or doing business with his or her public agency.

⚙ *The full Board may waive these two prohibitions, as they relate to Board appointed committees.*



Voting Conflicts of Interest

Requires no County, municipal, or other Local Public Officer (including members of Board appointed committees) shall vote in an official capacity upon any measure which would inure to the special private gain or loss of themselves, any principal or entity by whom they are retained, other than an agency as defined in the Fl. Stat. 112.312(2), or to any relative or business associate

Requires that public officers, including members of decision making committees:

- Must announce the nature of the conflict before the vote; abstain from voting; and file a memorandum of voting conflict
- May not participate in the discussion without first disclosing the nature of their interest in the matter (either in writing prior to the meeting, or orally as soon as they become aware that a conflict exists)

Becomes an issue when stakeholders are appointed to Decision Making Committees.



Financial Disclosures

- Board appointed committee members with land-planning, zoning or natural resources responsibilities must file an annual financial statement.



Which Laws Apply to Which Committees?

Florida Laws	Focus Group	Decision Making Committee
☉ Sunshine Law		✓
Public Records Law	✓	✓
Code of Ethics:		
Standards of Conduct	✓	✓
Voting Conflict		✓
Financial Disclosure		☉☉✓

☉ Includes discussions about a matter which may foreseeably come before the Committee; between one or more Committee member(s), or involving subcommittees or an individual Committee member who has been formally or informally authorized to exercise any decision-making authority or to reduce options for the Committee's consideration

☉☉ Committees with land-planning, zoning, or natural resources responsibilities.




Potential Exposures & Recommendations

- Reduce and Restructure Committees to Limit Liability:
 - Reduce the number of committees not required by Florida Statute or by County Ordinance.
 - Restructure Decision Making Committees, where possible, to Focus Groups
 - Restructure Recreation Councils and Community Center Boards to 501(3)(c) non-profit organizations (to address potential expenditure of funds and contractual obligations created without proper oversight, authority, or record keeping).

Currently there are 43 committees.
Each of these committees and each of these committees' members must consistently comply with the relevant laws.



- **Develop a formal review and approval process to establish a committee:**
 - Board defines the committee's charge, purpose and sunset/dissolution parameters
 - Staff analyzes scope and defines the committee type (Decision Making or Focus Group) and the applicable laws
 - Board adopts resolution to formally establish the committee, including sunset/dissolution provisions.
- **Develop a formal application process for the selection and appointment of committee members:**
 - Develop a Citizen Committee Application to establish a pool of interested citizens
 - Review applications to identify stakeholders with potential conflicts of interest and paid lobbyists
 - Determine applicability of Financial Disclosure
 - Forward eligible applicants to the Board for review and appointment



- **Develop a template for committee by-laws, specifically addressing the Florida Sunshine Laws, Public Records Laws, and the Code of Ethics Laws.**
- **Provide Committee Member Orientation and Ongoing Training to Ensure Organization-wide Understanding of the following:**
 - Decision Making Committees must comply with Conflict of Interest provisions and the Florida Sunshine Law (there is no delegation exception) All committees must comply with the Public Records Law and the Standards of Conduct
 - Individuals who knowingly do not comply with the Sunshine Law may face criminal charges, with penalties that include fines and imprisonment
 - A committee's noncompliance with the Sunshine Law may result in the nullification of future Board actions, increased program costs, delay and duplication of work.



Other Recommendations Include:

- **Develop and maintain a centralized custodial system for retaining committee minutes and by-laws on the County's Intranet.**
- **Establish the number of times a committee member can be reappointed to a committee.**



A draft policy has been prepared (Attachment #1) for the Board's consideration, to assure:

- Consistency and legal compliance in the formation, selection, and appointment of Committees.
 - Formal orientation and training on the applicability of Florida laws.
 - A reduction in potential liability to Leon County and its citizen volunteers.
-
- Upon Board approval, staff will bring back the finalized policy for adoption and assess existing committees in accordance with the new policy.



A day in Florida
Government is a day in
the Sunshine!

V.

ELECTION OF CHAIR/VICE-CHAIR

VI.

REVIEW OF COMMITTEE BY-LAWS

BY-LAWS OF THE LEON COUNTY CITIZEN CHARTER REVIEW COMMITTEE

DRAFT

Rule 1. Public Meetings and Sunshine Law: All meetings of the Committee, including all meetings of its subcommittees and study committees, shall be open to the public. Notice of the date, time and place of said meetings shall be made available to the public in advance of the meetings by written notice to a newspaper of general circulation in the County, by posting the date, time and place upon the Charter Committee's Internet site and by posting a notice on the public bulletin board maintained for such purposes at the County Courthouse, at least 48 hours before the meeting. All members of the Committee and all members of any subcommittee or study committee are subject to the provisions of Florida's Sunshine Law and shall abide by the letter and spirit of the Law.

Rule 2. Citizen Participation at Meetings: The Committee will entertain public comment on all substantive agenda items. Under the agenda item of "Remarks of Interested Citizens", interested citizens shall be afforded an opportunity to comment on matters before the Committee. The remarks of any citizen should be germane to the agenda or matters to come before the Committee. Each agenda shall include a point during the meeting at which "Remarks of Interested Citizens" may be made. The Committee may impose reasonable limitations on time allotted to any citizen or on the total time to be allotted to public participation during the meeting. Each citizen addressing the Committee is asked to observe the general rules of courtesy and civility, and to avoid repetition of other speakers. Citizens are asked to limit their comments to five minutes in the interest of fairness to all citizens desiring to be heard, although this requirement may be waived at the discretion of the Chairman for good cause.

Rule 3. Place of Meetings: The regular meetings of the Committee shall be at the Leon County Courthouse. The Committee may also resolve to hold meetings at other locations. The meetings of the Committee, subcommittees or study committees should be at a meeting place large enough to accommodate not only the Committee members but also interested citizens. The meeting place chosen shall be open and accessible, free of any admission charge or restriction, to the Committee and public.

Rule 4. Call and Notice of Meetings: Date, time and place of each regular meeting of the Committee shall be announced at the preceding regular or special meeting of the Committee, and posted on public bulletin boards in accordance with Leon County policy. The agenda of each regular or special meeting shall include the fixing of the date of the next regular meeting. Special meetings may be called by the Chair of the Committee, or by any seven (7) members of the Committee requesting such special meeting in writing filed with the County Administrator. The County Administrator shall be responsible for mailing a written notice of the date, time and place of meetings of the Committee to members of the Committee. All such notices shall be mailed to the members of the Committee at their addresses listed on an appropriate form kept by the County Administrator. It shall be the responsibility of any member of the Committee to notify the County Administrator of any change of address.

A written notice of special meetings of the entire Committee shall be given in the same manner as written notices of regular meetings, except that the written notice of a special meeting shall include the purpose for the call of such special meeting.

Rule 5. Agenda for Regular Meetings: The agenda for regular meetings of the Committee shall be generally as follows, subject to amendment or revision by the Committee Chair or a majority of the members present:

- I. Call to Order
- II. Invocation and Pledge
- III. Roll Call

- IV. Approval of Minutes of Previous Meeting
- V. Reports of Chairperson (if any)
- VI. Presentations by Invited Guests/Consultant
- VII. Remarks of Interested Citizens
- VIII. Reports of Committees (if any)
- IX. Unfinished Business
- X. New Business
- XI. Adjournment with Day Fixed for Next Meeting

Rule 6. Recording of Minutes: Meetings of the Committee shall be recorded on recording machines. The County Administrator shall be responsible for insuring that the recording apparatus is available at each meeting of the Committee. The tapes of all such meetings shall be preserved as required by law. Failure to tape record a meeting shall not affect the validity of any proceeding. The Committee shall make disposition of the tapes of such meetings to the Clerk of Court at the conclusion of the work of the Committee. The Clerk of Court shall further be responsible for the safeguarding of the tapes of such meetings. In addition to the tape recording of the meetings, a representative of the Clerk of Court shall take down minutes of the proceedings of the Committee. The chair of each committee or a person designated by the chair shall take minutes at all proceedings of the committee, and shall transcribe and deliver such minutes to the Clerk of Court. All records of the Committee, including the tape recordings of meetings, shall be made available to the public during office hours of the Clerk of Court or as established by the Committee. Minutes of committee proceedings shall be filed at least once per month. The Chair may request that a verbatim record of any proceeding before the Committee be made. Such a request is in addition to the requirements of Rule 6.

Rule 7. Quorum: A majority of the members of the Committee, or of any subcommittee shall constitute a quorum for transaction of business, and a majority of those present shall be sufficient to agree to any motion except as otherwise set forth in these bylaws.

Rule 8. Attendance: Regular attendance and attention to the business of the Committee is expected. The seat of any member who fails to attend three consecutive regular meetings, without previous notification, shall be presumed vacant, and the Chair shall report that fact to the County Commissioner who appointed the member, for confirmation that a vacancy exists. Vacancies shall be filled in the same manner as initial appointments.

Rule 9. Proxy Voting: No member of the Committee or any of its study committees or committees shall have the power to vote by proxy. Only those members physically present shall be entitled to vote.

Rule 10. Deliberations:

A. Issues Agenda. The Committee shall approve, by majority vote of those present, an initial agenda of issues to be considered, and a schedule of meetings at which the several approved issues shall be discussed. Prior to completion of the issues meetings, additional issues may be added and scheduled upon the request of four or more members.

After completion of the scheduled issues meetings but not later than January 7, 2010, additional issues may be scheduled with the concurrence of a majority of the Committee.

Any issue may be stricken from further consideration at issues meetings by a majority of those members present, but not less than seven members.

B. Decision Agenda. The Committee shall approve, by majority of those present, a schedule and agenda of meetings at which approved issues and sample text of proposed amendments shall be considered for inclusion in recommendations to be reviewed at public hearings.

After an proposed amendment has been discussed, the Committee may instruct the appropriate staff to prepare proposed amendments for review and discussion at public hearings with the concurrence of a majority of the entire committee.

C. Final adoption and transmittal. After all necessary hearings, the Committee shall amend (if necessary), approve and transmit the proposed Charter amendments to the Board of County Commissioners, and a proposed ballot title and summary of the substance and chief purpose of each measure, with the concurrence of two-thirds of those present but not less than 10 members.

Rule 11. Voting Generally: Each member present shall vote, unless a conflict of interest exists, in which case said conflict shall be publicly stated prior to the vote and filed in writing with the County Administrator, as provided by law.

Rule 12. Official Rules of Order: Except as otherwise provided in these rules of procedure, Robert's Rules of Order Newly Revised shall apply in matters of procedural conflict for the Committee, subcommittees, and study committees.

Rule 13. Duties of the Chair: The Chair shall:

- a. Preside at all regular and special meetings of the Committee;
- b. Represent the Committee at all functions and activities so requiring (but without authority to state any position of the Committee not previously approved);
- c. Serve as ex-officio (non-voting) member of all committees;
- d. Be charged with the responsibility of making all committee assignments and appointment of all chairs of committees;
- e. Call special meetings where necessary;
- f. Set meeting agendas in coordination with the Committee's consultant;
- g. Approve all disbursement requests, certifying that the disbursement has been duly approved by the entire Committee.

Rule 14. Duties of the Vice-Chair: The Vice-Chair shall perform the duties of the chairman in the absence or inability to serve of the Chair.

Rule 15. Duties of the Office of the County Administrator: The County Administrator shall:

- a. Prepare, dispatch, file and otherwise process all correspondence for the Committee as a whole;
- b. Provide for the reproduction or copying of such records as may be requested by the public in a reasonable period of time and at a rate consistent with Leon County policy.
- c. Maintain accurate records showing the nature, purpose and amount of all expenditures made on behalf of the Committee;
- d. Coordinate with the Office of the Clerk of Court in connection with the proof and filing of all disbursement requests and other administrative requirements.
- e. Perform other duties as prescribed by the Chairman.

Rule 16. Duties of the Clerk of Court: The Clerk of Court shall:

- a. Be custodian of all records of the Committee;
- b. Keep an address and attendance roster;
- c. The Clerk of Court shall make all minutes available to the public and open for inspection at all reasonable times. The attendance roster shall likewise be open for inspection by any member and by the public at any reasonable time.
- d. Provide for the reproduction or copying of such records as may be requested by the public in a reasonable period of time and at a rate consistent with Leon County policy.
- e. Perform other duties as prescribed by the Chairman.

Rule 17. Committees: The Committee may authorize the appointment of Subcommittees as it sees fit to plan and administer ministerial functions of the Committee, or to investigate and report to the full Committee on studies of special departments or functions of the existing or proposed government, or for any other lawful purpose; provided that no Committee shall have any final authority vested by law in the full Committee.

Rule 18. Policy on Publicity: Every effort shall be made to insure that the proceedings of the Committee are made available to the news media. No attempt shall be made to inhibit the normal processes of the news media. Public statements by the Committee or by study committees shall be coordinated through the Chair and the Consultant. Members of the Committee may make public or private statements of their personal feelings, attitudes or beliefs at any time. In making such statements, however, members of the Committee shall on every occasion make an affirmative statement that their views are not represented as the views of the Committee as a whole. The Chair of the Committee shall be responsible for announcing the adopted positions of the Committee.

Rule 19. Amendment: These rules and policies shall be the by-laws of the Committee and may be amended by an affirmative vote of two thirds (2/3) of the members of the Committee present and voting.

VII.

REVIEW OF COMMITTEE SCHEDULE

Leon CRC - Draft Timeline

[illegible]

VIII.

MEMBER DISCUSSION

IX.

ADJOURNMENT